
Introduced by Senator Torlakson

January 28, 2003

An act to amend Section 1950.5 of the Civil Code, relating to tenancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 90, as introduced, Torlakson. Tenancy: security deposits.

Existing law permits a landlord to apply security for a rental agreement to reimburse the landlord for certain costs incurred in connection with the tenancy. Existing law requires the landlord, within three weeks after the tenant vacates, to furnish the tenant, by personal delivery or by first-class mail, an itemized statement indicating the basis and amount of any security received and the disposition of the security. Existing law requires the landlord and to return the remaining portion of the security to the tenant.

This bill would revise these provisions to require a landlord to include a receipt for any labor or material the landlord has paid for and has deducted from the security. If the receipt lacks certain information about the person or entity providing the labor or material, the landlord would be required to provide it. The bill would establish specific methods by which a landlord could satisfy his or her obligation to provide the above-described information and remaining security, if any, within three weeks.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1950.5 of the Civil Code is amended to
2 read:

1 1950.5. (a) This section applies to security for a rental
2 agreement for residential property that is used as the dwelling of
3 the tenant.

4 (b) As used in this section, “security” means any payment, fee,
5 deposit or charge, including, but not limited to, any payment, fee,
6 deposit, or charge, except as provided in Section 1950.6, that is
7 imposed at the beginning of the tenancy to be used to reimburse
8 the landlord for costs associated with processing a new tenant or
9 that is imposed as an advance payment of rent, used or to be used
10 for any purpose, including, but not limited to, any of the following:

11 (1) The compensation of a landlord for a tenant’s default in the
12 payment of rent.

13 (2) The repair of damages to the premises, exclusive of
14 ordinary wear and tear, caused by the tenant or by a guest or
15 licensee of the tenant.

16 (3) The cleaning of the premises upon termination of the
17 tenancy necessary to return the unit to the same level of cleanliness
18 it was in at the inception of the tenancy. The amendments to this
19 paragraph enacted by the act adding this sentence shall apply only
20 to tenancies for which the tenant’s right to occupy begins after
21 January 1, 2003.

22 (4) To remedy future defaults by the tenant in any obligation
23 under the rental agreement to restore, replace, or return personal
24 property or appurtenances, exclusive of ordinary wear and tear, if
25 the security deposit is authorized to be applied thereto by the rental
26 agreement.

27 (c) A landlord may not demand or receive security, however
28 denominated, in an amount or value in excess of an amount equal
29 to two months’ rent, in the case of unfurnished residential
30 property, and an amount equal to three months’ rent, in the case of
31 furnished residential property, in addition to any rent for the first
32 month paid on or before initial occupancy.

33 This subdivision does not prohibit an advance payment of not
34 less than six months’ rent if the term of the lease is six months or
35 longer.

36 This subdivision does not preclude a landlord and a tenant from
37 entering into a mutual agreement for the landlord, at the request of
38 the tenant and for a specified fee or charge, to make structural,
39 decorative, furnishing, or other similar alterations, if the
40 alterations are other than cleaning or repairing for which the



1 landlord may charge the previous tenant as provided by
2 subdivision (e).

3 (d) Any security shall be held by the landlord for the tenant who
4 is party to the lease or agreement. The claim of a tenant to the
5 security shall be prior to the claim of any creditor of the landlord.

6 (e) The landlord may claim of the security only those amounts
7 as are reasonably necessary for the purposes specified in
8 subdivision (b). The landlord may not assert a claim against the
9 tenant or the security for damages to the premises or any defective
10 conditions that preexisted the tenancy, for ordinary wear and tear
11 or the effects thereof, whether the wear and tear preexisted the
12 tenancy or occurred during the tenancy, or for the cumulative
13 effects of ordinary wear and tear occurring during any one or more
14 tenancies.

15 (f) (1) Within a reasonable time after notification of either
16 party's intention to terminate the tenancy, or before the end of the
17 lease term, the landlord shall notify the tenant in writing of his or
18 her option to request an initial inspection and of his or her right to
19 be present at the inspection. At a reasonable time, but no earlier
20 than two weeks before the termination or the end of lease date, the
21 landlord, or an agent of the landlord, shall, upon the request of the
22 tenant, make an initial inspection of the premises prior to any final
23 inspection the landlord makes after the tenant has vacated the
24 premises. The purpose of the initial inspection shall be to allow the
25 tenant an opportunity to remedy identified deficiencies, in a
26 manner consistent with the rights and obligations of the parties
27 under the rental agreement, in order to avoid deductions from the
28 security. If a tenant chooses not to request an initial inspection, the
29 duties of the landlord under this subdivision are discharged. If an
30 inspection is requested, the parties shall attempt to schedule the
31 inspection at a mutually acceptable date and time. The landlord
32 shall give at least 48 hours prior written notice of the date and time
33 of the inspection if either a mutual time is agreed upon, or if a
34 mutually agreed time cannot be scheduled but the tenant still
35 wishes an inspection. The tenant and landlord may agree to forgo
36 the 48-hour prior written notice by both signing a written waiver.
37 The landlord shall proceed with the inspection whether the tenant
38 is present or not, unless the tenant previously withdrew his or her
39 request for the inspection.

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) (1) ~~Within three weeks~~ *21 days* after the tenant has vacated the premises, the landlord shall furnish the tenant, by ~~personal delivery or by first-class mail, postage prepaid~~ *the means specified in paragraph (2),* a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant. *The landlord shall include a receipt for any labor or material the landlord has paid for and has deducted from the security pursuant to subdivision (e). If a receipt does not include the name, address, and telephone number of the person or entity that provided the labor or material, the landlord shall include that information in the statement.*

(2) *The landlord may satisfy his or her obligation to provide the items required by paragraph (1) in any of the following means:*

(A) *By personal delivery, within 21 days after the tenant has vacated the premises.*



1 (B) By first-class mail, postage prepaid, sent within 16 days
2 after the tenant has vacated the premises.

3 (C) By prepaid overnight delivery, sent within 20 days after the
4 tenant has vacated the premises.

5 (h) Upon termination of the landlord's interest in the premises,
6 whether by sale, assignment, death, appointment of receiver or
7 otherwise, the landlord or the landlord's agent shall, within a
8 reasonable time, do one of the following acts, either of which shall
9 relieve the landlord of further liability with respect to the security
10 held:

11 (1) Transfer the portion of the security remaining after any
12 lawful deductions made under subdivision (e) to the landlord's
13 successor in interest. The landlord shall thereafter notify the tenant
14 by personal delivery or by first-class mail, postage prepaid, of the
15 transfer, of any claims made against the security, of the amount of
16 the security deposited, and of the names of the successors in
17 interest, their address, and their telephone number. If the notice to
18 the tenant is made by personal delivery, the tenant shall
19 acknowledge receipt of the notice and sign his or her name on the
20 landlord's copy of the notice.

21 (2) Return the portion of the security remaining after any
22 lawful deductions made under subdivision (e) to the tenant,
23 together with an accounting as provided in subdivision (g).

24 (i) Prior to the voluntary transfer of a landlord's interest in the
25 premises, the landlord shall deliver to the landlord's successor in
26 interest a written statement indicating the following:

27 (1) The security remaining after any lawful deductions are
28 made.

29 (2) An itemization of any lawful deductions from any security
30 received.

31 (3) His or her election under paragraph (1) or (2) of subdivision
32 (h).

33 This subdivision does not affect the validity of title to the real
34 property transferred in violation of this subdivision.

35 (j) In the event of noncompliance with subdivision (h), the
36 landlord's successors in interest shall be jointly and severally
37 liable with the landlord for repayment of the security, or that
38 portion thereof to which the tenant is entitled, when and as
39 provided in subdivisions (e) and (g). A successor in interest of a
40 landlord may not require the tenant to post any security to replace

1 that amount not transferred to the tenant or successors in interest
2 as provided in subdivision (h), unless and until the successor in
3 interest first makes restitution of the initial security as provided in
4 paragraph (2) of subdivision (h) or provides the tenant with an
5 accounting as provided in subdivision (g).

6 This subdivision does not preclude a successor in interest from
7 recovering from the tenant compensatory damages that are in
8 excess of the security received from the landlord previously paid
9 by the tenant to the landlord.

10 Notwithstanding this subdivision, if, upon inquiry and
11 reasonable investigation, a landlord's successor in interest has a
12 good faith belief that the lawfully remaining security deposit is
13 transferred to him or her or returned to the tenant pursuant to
14 subdivision (h), he or she is not liable for damages as provided in
15 subdivision (l), or any security not transferred pursuant to
16 subdivision (h).

17 (k) Upon receipt of any portion of the security under paragraph
18 (1) of subdivision (h), the landlord's successors in interest shall
19 have all of the rights and obligations of a landlord holding the
20 security with respect to the security.

21 (l) The bad faith claim or retention by a landlord or the
22 landlord's successors in interest of the security or any portion
23 thereof in violation of this section, or the bad faith demand of
24 replacement security in violation of subdivision (j), may subject
25 the landlord or the landlord's successors in interest to statutory
26 damages of up to twice the amount of the security, in addition to
27 actual damages. The court may award damages for bad faith
28 whenever the facts warrant such an award, regardless of whether
29 the injured party has specifically requested relief. In any action
30 under this section, the landlord or the landlord's successors in
31 interest shall have the burden of proof as to the reasonableness of
32 the amounts claimed or the authority pursuant to this section to
33 demand additional security deposits.

34 (m) No lease or rental agreement may contain any provision
35 characterizing any security as "nonrefundable."

36 (n) Any action under this section may be maintained in small
37 claims court if the damages claimed, whether actual or statutory
38 or both, are within the jurisdictional amount allowed by Section
39 116.220 of the Code of Civil Procedure.

1 (o) Proof of the existence of and the amount of a security
2 deposit may be established by any credible evidence, including,
3 but not limited to, a canceled check, a receipt, a lease indicating the
4 requirement of a deposit as well as the amount, prior consistent
5 statements or actions of the landlord or tenant, or a statement under
6 penalty of perjury that satisfies the credibility requirements set
7 forth in Section 780 of the Evidence Code.

8 (p) The amendments to this section made during the 1985
9 portion of the 1985–86 Regular Session of the Legislature that are
10 set forth in subdivision (e) are declaratory of existing law.

